

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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September 29, 2006

The Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

I wrote to you on July 17, 2006, to highlight the inadequate reimbursement Washington receives to incarcerate criminals under the Department of Justice's (DOJ) State Criminal Alien Assistance Program (SCAAP). In that letter, I requested reimbursement of approximately \$50 million, owed to Washington taxpayers, for incarcerating criminal illegal immigrants during fiscal years 2005 and 2006, or in the alternative, that you make arrangements to take federal custody of the approximate 951 criminal illegal immigrants currently under the custody of the Washington Department of Corrections (DOC).

Recently, I received a response to my letter from Assistant Attorney General Regina Schofield on your behalf (enclosed). Ms. Schofield suggests that DOJ's obligation to reimburse Washington, and all other states, is subject to the availability of appropriations.

Frankly, I cannot accept this response to our claim. It fails to appreciate the importance of this issue to the states. SCAAP funding was a topic of great concern at a recent Western Governors Association meeting and is an important issue to at least Governors Napolitano, Schwarzenegger, and me. We cannot accept inattention to our concerns.

As previously explained, it is the federal government's responsibility to incarcerate criminal illegal immigrants. Despite this clear obligation, Washington has incarcerated criminal illegal immigrants for many years at great expense to state taxpayers without full reimbursement as required by federal law. See 8 U.S.C. § 1231(i)(1).

Failure to appropriate sufficient SCAAP funds to cover these costs ignores the federal government's legal obligation. At a minimum, the Administration must propose to and lobby the support of full SCAAP funding. However, you remain noticeably silent as states struggle to fulfill a federal responsibility. In fact, the Administration has attempted to eliminate SCAAP funding in the federal budget.



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To justify these proposed cuts, the Administration claimed "the program lacks performance goals and metrics." States are not making money from SCAAP, a program that reimburses less than 6 percent of the average daily cost of incarceration. Moreover, it's not that the program lacks performance goals and metrics, it is simply that the program fails to meet its goal. The goal is simple. Fully reimburse states for carrying out a federal function.

Let me reiterate the fairness of and necessity for Washington's claim. We are forced to incarcerate some offenders in other states, because of limited jail and prison capacity. We do not have the luxury of paying \$4.75/day to incarcerate our prisoners in other states (Current SCAAP reimbursement rate. Actual cost is \$74.441 per day). Washington taxpayers must pay the full cost of incarceration in the receiving state, as the federal government should be doing in Washington. It is unacceptable that Washington must send its prisoners out of state and pay the full cost, while incarcerating an equivalent number of federal prisoners in Washington facilities essentially for free.

Again, I am asking for your assistance to receive full funding to cover Washington's actual cost of incarcerating criminal illegal immigrants. As an absolute minimum, you should request full funding from Congress to address this responsibility. In the alternative, you should direct the Bureau of Prisons or the Immigrations and Customs Enforcement agency to take custody of the criminal illegal immigrants currently detained in Washington prisons, as required by 8 U.S.C. § 1231.

It is my sincere intention to reach a mutually beneficial resolution to this overwhelming financial burden on Washington taxpayers as soon as possible. I ask you to respond to my request in a manner that supports this intention.

Sincerely,

A handwritten signature in black ink, reading "Chris Gregoire". The signature is written in a cursive, flowing style.

Christine O. Gregoire
Governor

Enclosure



RECEIVED

AUG 21 2006

OFFICE OF THE GOVERNOR

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

AUG 14 2006

The Honorable Christine O. Gregoire
Governor of Washington
P.O. Box 40002
Olympia, WA 98504

Dear Governor Gregoire:

Thank you for your letter to Attorney General Gonzales regarding the State Criminal Alien Assistance Program (SCAAP). Your letter was forwarded to the Office of Justice Programs (OJP) because one of its components, the Bureau of Justice Assistance, administers SCAAP.

SCAAP was established to provide direct financial support for states and localities that incarcerate undocumented criminal aliens convicted of local or state criminal offenses. Under 254(I) of the Immigration and Nationality Act, DOJ's obligation to reimburse a state is subject to the availability of appropriations; that is, the extent to which a state is entitled to payment is dependent on the appropriation. While the FY 2005 SCAAP appropriation of \$300 million did not provide 100 percent reimbursement to SCAAP applicants, Congress did increase the FY 2006 appropriation to \$376 million, which could allow applicants to potentially receive a higher percentage reimbursement in 2006.

Please be assured that DOJ has paid and will continue to pay costs to the extent the Program's annual appropriation from Congress is sufficient and other states and localities receive equitable payment. If we can provide additional information regarding this or any other matter, please do not hesitate to contact the Office of Communications at (202) 307-0703.

Sincerely,

Regina B. Schofield
Assistant Attorney General